

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES A. BURKE, JR.	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
JOHN KRESTES, et al.	:	NO. 08-4286

ORDER

AND NOW, this 27th day of July, 2010, upon consideration of the Petition for Writ of Habeas Corpus of Petitioner James A. Burke, Jr. (Docket No. 1) and the Response (Docket No. 5) and Amended Response thereto (Docket No. 14), and after review of the Report and Recommendation of United States Magistrate Judge Sandra Moore Wells (Docket No. 17), and the petitioner's Objections thereto (Docket No. 18), IT IS HEREBY ORDERED, for the reasons set out in a Memorandum of today's date, that:

1. The petitioner's Objections are OVERRULED.
2. The Petition for Writ of Habeas Corpus is DENIED and DISMISSED without an evidentiary hearing.
3. The Court will issue a certificate of appealability as to the following four claims of the Petition, defined according to the numbering system employed in the Report and Recommendation without objection from the petitioner and adopted in the Court's Memorandum accompanying this Order:

a. Claim 1.3, which alleges that the petitioner's counsel was ineffective for failing to insure that the trial court conducted an adequate plea colloquy;

b. Claim 1.13, which alleges that the petitioner's counsel was ineffective for failing to take steps to see that the petitioner's post-sentence motion was disposed of in a timely manner with an order to memorialize the denial so that the petitioner could pursue a timely direct appeal.

c. Claim 2.3, which alleges that the trial court erred by failing to conduct an adequate colloquy to determine whether the petitioner's plea was knowing and voluntary.

d. Claim 3.2, which alleges that the direct appeal court erred by concluding that the petitioner's guilty plea was knowing and voluntary despite the absence of a plea colloquy with the petitioner.

BY THE COURT:

/s/ Mary A. McLaughlin  
MARY A. McLAUGHLIN, J.